

The terms and conditions set forth below and in the Service Order, the Terms and Conditions of Business Services ("T&Cs") and applicable rates, tariffs and/or price/service guides posted on First Communications' website [www.firstcomm.com](http://www.firstcomm.com) from time to time apply to the MPLS Service provided pursuant to the Agreement ("MPLS Service" or "Service"). Customer expressly agrees that any changes, including additions, deletions or replacement, to the MPLS Service ordered hereunder (such as adding/deleting/replacing MPLS Service or equipment, increasing bandwidth, changing length of Term) to the extent relating to, arising out of or connected with the original Service shall be governed by the Agreement, regardless of whether such Service changes are documented on a separate, later signed Service Order or Amendment or otherwise changed in connection with provisioning or delivery of the Service. Defined and/or capitalized terms used herein and not otherwise defined shall have the meanings given to them in the T&Cs.

**1. SERVICE; IP ADDRESS**

MPLS Service is described as follows and may be provided with other services offered by First Communications under an applicable Service Order: Layer 2 Ethernet Virtual Private Line ("EVPL"); Layer 2 Ethernet Virtual Private Local Area Network ("EVP-LAN"); or Layer 3 Virtual Private Routed Network ("VPRN").

First Communications will provide IP address assignments for use with its Internet Service, which is subject to the Use of Service requirements and Acceptable Internet Use Policy set forth in the T&Cs. First Communications adheres to the American Registry of Internet Numbers (ARIN), and ultimately the Internet Corporation of Assigned Names and Numbers (ICANN), recommended guidelines for assignment/allocation of Internet IP addresses to its customers. IP addresses assigned by First Communications are non-transferable and remain the sole property of First Communications. First Communications reserves the right to recover any IP addresses due to non-use or violation of the Agreement, at its sole discretion. Upon Service termination or expiration, First Communications requires, and Customer agrees, to return all assigned IP addresses.

**2. TERM**

Customer has 24 hours to test the Service once it is made available to Customer. If Customer has not contacted First Communications within 48 hours of such Service availability regarding non-acceptance of the Service specifying in detail the testing failure, the Service Term and billing for Service will begin effective as of the date such Service was first made available to Customer or sooner as otherwise set forth in the Service Order. At the end of the initial or any renewal Term, Service shall continue on an annual basis, at First Communications' then current year-to-year rates, unless and until terminated prior to the beginning of any contract year upon 60 days prior written notice by either Party delivered to the other Party or otherwise terminated as set forth in the Agreement. Customer must provide 60 days prior written notice to terminate/disconnect Service, including any termination at or after expiration of the Term, and will be subject to an Early Termination Fee in the event of termination of Service prior to expiration of the Term.

**3. PROJECTED INSTALLATION TIMEFRAME; INSTALLATION DELAY BY CUSTOMER**

Projected installation timeframe is within 120 days from the date of order acceptance by First Communications' underlying carrier. In the event of Special Construction Costs (as defined below), the projected installation timeframe may be extended. The projected timeframe is not a commitment to delivery or delivery date of Service. Customer acknowledges and agrees that the Service is subject to the terms and conditions of the Agreement and may be delayed due to credit-related, construction, site preparation, Force Majeure Event or other foreseeable or unforeseeable issues. If Customer expects to miss a projected start of Service date by more than 24 hours, Customer must advise First Communications in writing at least 7 days before the projected Start of Service date and pay \$400.00 or First Communications' then current delay fee, in addition to any third party provider charges resulting from Customer's delay. If Customer fails to comply with this notice requirement, billing will commence on the projected Start of Service date.

**4. SPECIAL CONSTRUCTION REQUIREMENTS AND CHARGES**

Service is subject to availability and operational limitations of carrier systems, facilities, materials and equipment. If such systems, facilities, materials and equipment (including, but not limited to, outside plant, cable, repeater, conduit, structures and/or electronics) are not available, "Special Construction" will be required and Special Construction Costs ("Special Construction Costs") will apply and be charged to Customer. All Special Construction Costs associated with delivery of the Service shall be the responsibility of Customer, which costs include, but are not limited to, recovery of all direct costs associated with the length, type, and/or size of facility and/or cable deployment required, equipment deployment required, and Term of Service requested. In the event of Special Construction Costs, First Communications will notify Customer via e-mail or otherwise of any Special Construction Costs, additional MRC due to additional equipment necessary to provide Service, or extensive Special Construction delivery timeframe. Customer must submit the signed acceptance of Special Construction Costs and/or conditions to First Communications within 25 calendar days after the date of e-mail or other delivery by First Communications of the Special Construction notification or Customer shall be deemed to have cancelled the request for Service without incurring Early Termination Fees. First Communications, at its sole discretion, may require pre-payment of all or part of the Special Construction Costs upon Customer acceptance before proceeding with the order, and the remaining Special Construction Costs will be included on the first invoice for the Service. If there are no Special Construction Costs, additional MRCs or extensive Special Construction timeframes or if Customer has given notification of acceptance and, as applicable, paid based on the Special Construction notification, First Communications will proceed with the order. Any executed acceptance agreement shall become part of the Agreement as if fully set forth herein.



**5. CONDUIT REQUIREMENTS AND CHARGES**

Service is subject to availability and operational limitations of conduit or other designated pathway ("conduit") from Customer property line to the minimum point of entry (MPOE) within which the access vendor may place carrier facilities to terminate service from the carrier network to the MPOE. If such conduit is unavailable, Customer must arrange for construction of such conduit through either First Communications and/or a third-party vendor, and all associated costs of constructing said conduit shall be the responsibility of Customer. If conduit is needed, First Communications and/or its access vendor will notify Customer via hard copy, e-mail or other notice of any necessary conduit construction during the access vendor's site survey.

Customer must submit signed acceptance of responsibility to furnish required conduit to First Communications within 14 calendar days after the date of notice of the conduit construction requirement, or Customer shall be deemed to have cancelled the request for Service without incurring Early Termination Fees. In the event Customer selects First Communications to handle construction of necessary conduit, First Communications, at its sole discretion, may require pre-payment of all or part of the conduit construction costs upon Customer acceptance before proceeding with the order, and the remaining conduit construction costs will be included on the first invoice for the Service. If there are no conduit construction requirements or if Customer has given notification of acceptance and, as applicable, paid based on the conduit requirement notification, First Communications will proceed with the order. Any executed acceptance agreement shall become part of the Agreement as if fully set forth herein.

**6. SITE PREPARATION**

Customer agrees to make Customer's site ready for entrance facilities and to be responsible for all access and preparation required to deliver the Service, including working with the property owner or other third party if applicable. Customer shall provide one dedicated fused/breaker: 15 amps, 110V AC outlet within 6 feet of First Communications NTE equipment. Said outlet shall be three-pronged and properly grounded. In addition, Customer shall provide all site requirements, which will be detailed in First Communications' Site Survey Form. In addition to physical access to Customer buildings and premises, Customer shall be responsible for First Communications' and/or its Representatives' access to a suitable room-ready equipped telecom room in which to establish the service point of demarcation and use of suitable Customer-provided fiber conduit between the carrier off-premise drop location and the point of demarcation, in each case whenever required to provide, modify, maintain, repair and/or cease providing the Service under the Agreement, and all necessary or appropriate space, power and environmental conditions at any applicable point of demarcation as specified by First Communications or its Representative. Customer shall be liable for any loss or damage, including theft, to First Communications' or its Representatives' equipment or facilities to the extent such loss or damage is the result of negligent acts or omissions, willful misconduct or breach of the terms of the Agreement by Customer or its affiliates or their respective employees, agents, contractors or end users.

**7. EQUIPMENT**

First Communications is not responsible for the installation, operation, maintenance, compatibility or performance of any Customer premise equipment. Customer shall conduct its operations in a manner that does not interrupt, impair or interfere with the operations of First Communications' interconnecting systems. Customer shall not adjust, align, attempt to repair, relocate or remove First Communications' equipment or facilities, except as expressly authorized by First Communications. If the equipment and facilities of Customer are not compatible with a Service provided to Customer, any special interface equipment or facilities necessary to achieve compatibility shall be the sole responsibility and expense of Customer. If Customer connects incompatible equipment to the Service, First Communications makes no commitments regarding the delivery or performance of the Service. If third party hardware or software impairs operation of the Service, Customer remains liable for payment of all Charges and fees for the Service, and, if third party equipment or software is likely to cause hazard or service interruption or obstruction, Customer will eliminate such likelihood at First Communications' request, or at First Communications' option First Communications may take such action as necessary to eliminate such likelihood. Any costs incurred by First Communications as a result of such action may be recovered by First Communications through invoice of such amounts to Customer.

**CUSTOMER SHOULD CAREFULLY REVIEW THE TERMS AND CONDITIONS OF BUSINESS SERVICES SET FORTH ON FIRST COMMUNICATIONS' WEBSITE FOR ADDITIONAL PROVISIONS APPLICABLE TO FIRST COMMUNICATIONS' PROVISION OF SERVICE HEREUNDER, INCLUDING, WITHOUT LIMITATION, POTENTIAL CHARGES OR FEES, CONDITIONS OF USE, ACCEPTABLE INTERNET USE POLICY, BILLING AND PAYMENT PROCEDURES, 911/E911 SERVICES, INCLUDING SIP OVER MPLS 911 SERVICES, INDEMNIFICATION, WARRANTY DISCLAIMERS AND LIMITATIONS OF FIRST COMMUNICATIONS' LIABILITY.**

The MPLS & Metro Ethernet MPLS Service SLA applies to all services delivered over the First Communications MPLS Network including Ethernet Virtual Private Line (EVPL), Virtual Private LAN Service (VPLS), and Virtual Private Routed Network (VPRN) services (for purposes of this SLA only, "Service"). Specific Service level goals have been established for each form of Bandwidth profiling also known as Quality of Service supported on the MPLS network including Traffic Classification-Based, Service-Based, and Standard bandwidth profiles.

**1. Network and Port Components.** This SLA applies solely to the Service and the underlying network components of the First Communications MPLS Network ("MPLS Network") used solely for the purpose of providing the Service, and does not modify or affect any other SLAs provided by First Communications (if any) for telecommunications or information services purchased by Customer. The MPLS Network includes routers, switches, fiber and any other facilities that are owned by First Communications or other providers specifically designated by First Communications. As defined in this SLA, a Point of Presence (POP) means a First Communications POP location that represents the provider edge of the MPLS Network.

**2. Network and Port-Related Goals.** The following service level goals ("Goals") apply to MPLS and Metro Ethernet MPLS Service purchased from First Communications. The Goals associated with Latency, Jitter, and Packet Loss are measured using monthly averages from the First Communications MPLS Network and apply after the Service has been accepted for use.

**Network Availability**

Total amount of Service "downtime" (in minutes) for from all trouble tickets relative to Network Outage Time (per individual Service location) rounded up to the nearest hour.

*Example: Total Network Outage time of 20 minutes = 1 hour*

**Network Availability**

Latency measured by averaging sample measurements (in 5 minute intervals) taken during a calendar month between First Communications MPLS Network routers.

**Jitter**

Jitter measured by averaging sample measurements (in 5 minute intervals) taken during a calendar month between First Communications MPLS Network routers.

**Packet Loss**

Packet Loss is measured by averaging sample measurements (in 5 minute intervals) taken during a calendar month between First Communications MPLS Network routers.

**Mean Time to Repair (MTTR)**

MTTR is measured by the following formula:

$$\frac{\text{Sum of all trouble tickets Service restoration intervals relative to the Network Outage in the calendar month}}{\text{Total number of trouble tickets relative to Network Outage in the calendar month}}$$

Applicable Components	Service Level Objectives by Bandwidth Profile						Service Credits *
	Traffic Classification-Based Profiling				Service-Based Bandwidth Profile	Standard Bandwidth Profile	
	Real-Time Voice	Video	Application Data	Best Effort			
<b>Network Availability*</b>	Premium Access 99.999% available Standard Access 99.9% available						1 day credit = 1/30 of the monthly fees for the applicable location(s) per hour of downtime (e.g. downtime between 1 to 60 minutes = 1 day credit eligible) in a given billing period
<b>Latency**</b>	<=39ms	<=45ms	<=45ms	N/A	<=45ms	<=45ms	1 day credit = 1/30 of the monthly fees for the applicable location(s) if average monthly latency exceeds objective
<b>Jitter**</b>	<=0.5ms	<=0.8ms	<=0.9ms	N/A	N/A	N/A	1 day credit = 1/30 of the monthly fees for the applicable location(s) if average monthly jitter exceeds objective
<b>Packet Loss as % of CIR**</b>	99.95% of CIR average per month	99.9% of CIR average per month	99.9% of CIR average per month	N/A	99.9% of CIR average per month	99.9% of CIR average per month	1 day credit = 1/30 of the monthly fees for the applicable location(s) per each percentage below the stated monthly average packet loss objective
<b>MTTR ***</b>	4 Hour				4 Hour	4 Hour	1 day credit = 1/30 of the monthly fees for the applicable location(s) for each hour that exceeds the initial MTTR objective in a given billing period

**In all instances, see Section 4 for remedies, requirements and exceptions**

**\*NOTE:** First Communications Components Included in Network Availability: (a) First Communications dedicated facilities used to provide connectivity between Customer's location, or First Communications provided access to the First Communications POP, and (b) First Communications provided CPE (Channel Bank, Router, CSU/DSU) if any.

**\*\*NOTE:** First Communications Network Latency, Jitter, and Packet Loss are relative to the First Communications MPLS Network only and do not include local access or Customer specific performance. Latency and Packet Loss are measured on an ongoing basis, therefore if Customer believes First Communications has failed to meet the network performance guarantees set forth above (Latency and Packet Loss), then Customer must contact First Communications as described below. Upon First Communications verification that the actual average MPLS Network performance for the preceding 30 days has exceeded Goals, Customer will be eligible for SLA credit.

**\*\*\*NOTE:** MTTR is calculated less access time. Access time is (a) the time it takes for Customers to respond to First Communications' repair questions related directly to current open trouble ticket(s) or (b) the time a First Communications on-site technician waits to gain access to the Customer's premises.

### 3. Maintenance.

**3.1 Network Normal Maintenance.** "Normal Maintenance" means scheduled maintenance, including but not limited to upgrades of hardware or software or upgrades to increase capacity. Normal Maintenance may temporarily degrade the quality of the Service, including possible Network Downtime. "Local Time" means the local time in the time zone in which an Affected Service is located. First Communications may change the maintenance window times upon posting to the website or other notice to Customer.

**3.2 Network Urgent Maintenance.** "Urgent Maintenance" means efforts to correct network conditions that are likely to cause a material Service outage and that require immediate action. Urgent Maintenance may degrade the quality of the Service, including possible Network Downtime. Such effects related to Urgent Maintenance will entitle Customer to service credits as set forth in this SLA. First Communications may undertake Urgent Maintenance at any time deemed necessary and will provide notice of Urgent Maintenance to Customer as soon as is commercially practicable under the circumstances.

### 4. General.

**4.1 Remedies; Requirements.** To be eligible for service credits under this SLA, Customer must be in good standing with First Communications and current in its obligations. To receive service credits, Customer must contact Customer Care and submit the relevant trouble ticket information within five business days following the end of the month in which the relevant Goal was not met. First Communications will determine the credits provided to Customer in accordance with the requirements of this SLA. A credit will be applied only to the month in which the event giving rise to the credit occurred. Furthermore, only the specific Service location incurring the trouble shall receive the credit. The credit will be applied to the MRC(s) of that location's Affected Service only, after application of all discounts and does not apply to MRCs of other services or locations. The maximum service credits issued in any one calendar month will not exceed: (a) seven days charges pro-rated from the MRC of the Affected Service with respect to Network Availability, Reporting, First Communications Provided Local Access Installation, and D/DoS; or (b) 50% of the MRCs of the Affected Service with respect to the other Goals. "Affected Service" means the applicable Service hereunder that fails to meet the applicable Goal. In no event will the total credit, in the aggregate for all credits issued in one month, exceed the equivalent of 50% of the relevant MRCs for the Affected Service. Cumulative credits in any one month must exceed \$25.00 to be processed. If Customer fails to notify First Communications in the manner set forth above with respect to the applicable SLA credits, Customer will have waived its right to such SLA credits for that month. CUSTOMER'S RIGHT TO RECEIVE SUCH CREDITS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND FIRST COMMUNICATIONS' SOLE AND EXCLUSIVE OBLIGATION IN THE EVENT OF A PERFORMANCE FAILURE, EVEN IF SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

**4.2 Service Credit Exceptions.** Service credits will not be issued where the SLA is not met as a result of:

- (a) The acts or omissions of Customer, its employees, contractors or agents or end users;
- (b) The failure or malfunction of equipment, applications, facilities or systems not owned or controlled by First Communications;
- (c) Force Majeure Events;
- (d) Network Normal Maintenance, alternation or implementation;
- (e) The unavailability of required Customer personnel, including as a result of failure to provide First Communications with accurate, current contact information; or
- (f) First Communications lack of access to the Customer or other premises where reasonably required to restore the Service.

**4.3** First Communications reserves the right to review and deny any credits under this SLA or otherwise claimed by Customer, if, in First Communications' reasonable judgment, the claim does not meet the criteria established above for such claim.